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EXAMINER

HARLE, JENNIFER I

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/826,197

Applicant(s)

WHITE, DANIEL F.

Examiner

Jennifer I. Harle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 3-11 and 14-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Claims 1-20 are pending. Claims 1-20 are subject to an election/restriction requirement. Group I, claims 1, 2, 12, and 13 was elected with traverse and those claims are being examined on the merits in this action.

#### *Election/Restrictions*

- I. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1, 2, 12, and 13 drawn to a method of obtaining information about a time-sensitive item through a web site and its system, classified in class 705, subclass 1.
  - II. Claims 3-5, 7 and 14-15, drawn to a method for obtaining information about a product utilizing EPLs and RFID labels and a system therefore, classified in class 235, subclass 383.
  - III. Claims 6-7, 11, and 16, drawn to a method of obtaining expiration information about a product utilizing EPLs and RFID labels and a system therefore, classified in class 235, subclass 383.
  - IV. Claims 8-10, and 17-20, drawn to a method of pricing a product based upon expiration information utilizing EPLs and RFID labels and a system therefore, classified in class 235, subclass 383.

The inventions are distinct, each from the other because of the following reasons:  
Inventions I, II, III and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as providing information to a purchaser via the Internet about the shelf life of a purchased item via information from the

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electronic receipt. This is a separate use from Groups II, III and IV, which obtain information about a product utilizing EPLs and RFID labels and can be used for promotion of products within the store in association with inventory tracking, price the product based upon expiration information and obtaining information about a products expiration utilizing EPLs and RFID labels, which can be utilized in a store permitting inventory tracking by a retailer for removal of the items from the shelves all separately usable from each other and from Group I. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification between Group I and Groups II-IV, restriction for examination purposes between Group I and Groups II-IV as indicated is proper.

Moreover, these inventions are distinct for the reasons given above and the search required for each Group is different and not required for the other, restriction for examination purposes as indicated is also proper.

During a telephone conversation with Douglas Foote (Registration No. 31013) on July 15, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1, 2, 12, and 13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3-11 and 14-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The examiner notes for the record that claim 7 was grouped with claim 6 because the examiner believed that it was meant to depend from claim 6. The reason being that the claim contained the phrase "the expiration information" and the only antecedent basis for such language

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and the organization and structure of the preceding claims was such that the examiner grouped the claims accordingly.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the obtaining of information from a web site and a first (associated with a supplier) and second computer (associated with a retailer) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 1, 2, 12, and 13 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 2, 12, and 13 cite a time-sensitive item, however, the specification does not define what a time sensitive item is. Reference is made to expiration of products but not links is

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made between them and time-sensitive items nor is it apparent that this is the intended scope of a time-sensitive item.

Applicant claims a first computer (associated with a supplier) which has a web site address and which stores the information about the time-sensitive item; and a second computer (associated with a retailer) which identifies the time-sensitive item and which contacts the first computer to obtain the information. This is disclosed in the Summary of the Invention with the exception of a second computer associated with a retailer. However, there is nothing in the Detailed Description which discloses any method of obtaining time-sensitive information from web site. There is a limited disclosure that expiration information is stored either locally at server 12, or at another server, such as a World Wide Web (Web) server 16 of the seller, who may be a supplier or manufacturer, and who determines the expiration information for its products and the explanation goes on to inputting of the information and report generation by printer or display by store employees. The two servers are disclosed as alternatives. It is also disclosed that the ELP computer and the server can be one computer. If so then the ELP would either not have an internet connection or feed directly to the World Wide Web server and there would be no need to go to the internet web site because you would already be directly connected. There is no disclosure of any automatic direct or redirect to a url or web site address. The examiner can find no disclosure of separate computers for suppliers and retailers. The seller is defined as being a supplier or manufacturer who manages the expiration information but every time he is discussed in the Detailed Description it is in connection with the store employee not as a separate supplier or manufacturer. The lack of any drawings illustrating these embodiments reinforces the examiner's analyses.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 2, 12, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "time-sensitive" in claims 1, 2, 12, and 13 is a relative term which renders the claim indefinite. The term "time-sensitive" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. "Time-sensitive" is relative to the situation, environment and even the expertise/technology. For example, the same item could be have several "time-sensitivities". Black's Law Dictionary could be "time-sensitive" in that a student needs it for a particular class, a book store needs it for restocking, an edition is outdated due to changes in meanings, and even the book itself has become brittle and needs to be replaced. A rental property could be considered "time-sensitive" for vacancy/rental purposes, for cleaning/preparing for a new tenant purposes, and for sale purposes. The same could be said for pharmaceuticals, "time-sensitivity" could apply in a variety of situations, such as, recalls, removal of expired medications, notification of improper fulfillment, warnings about potential new side effects, class action lawsuits, and notification of fulfillment. All of the examples have different criticality, time-frames and meanings contained within the phrase "time-sensitive" rendering it indefinite to the point where one of ordinary skill in the art would not be apprised of the scope of the invention as pertains to the claims.

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Thus, for examination purposes this phrase is being interpreted in its broadest scope to refer to any time constraint, control or restriction.

### *Lexicography*

5. After careful review of the specification and prosecution history, the Examiner is unaware of any desire—either expressly or implicitly—by Applicant(s) to be their own lexicographer and to define a claim term to have a meaning other than its ordinary and accustom meaning.

Therefore, the Examiner starts with the presumption that all claim limitations are given their ordinary and accustom meaning. See *Bell Atlantic Network Services Inc. v. Covad*

*Communications Group Inc.*, 262 F.3d 1258, 1268, 59 USPQ2d 1865, 1870 (Fed. Cir.

2001)(“[T]here is a heavy presumption in favor of the ordinary meaning of claim language as

understood by one of ordinary skill in the art.”); *CCS Fitness Inc. v. Brunswick Corp.*, 288 F.3d

1359,1366, 62 USPQ2d 1658, 1662 (Fed. Cir. 2002) (There is a “heavy presumption that a claim

term carries its ordinary and customary meaning.”). See also MPEP §2111.01 and *In re Zletz*,

893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).<sup>1</sup>

In accordance with the ordinary and accustom meaning presumption, during examination the claims are interpreted with their “broadest reasonable interpretation . . . .” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).<sup>2</sup>

However, if Applicant(s) wish to use lexicography and desire a claim limitation to have a meaning other than its ordinary and accustom meaning, the Examiner respectfully requests

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<sup>1</sup> It is the Examiner’s position that “plain meaning” and “ordinary and accustom meaning” are synonymous. See e.g. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001) (“[A]ll terms in a patent claim are to be given their plain, ordinary and accustomed meaning . . .”).

<sup>2</sup> See also MPEP §2111; *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc).



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Applicant(s) in their next response to expressly indicate<sup>3</sup> the claim limitation at issue<sup>4</sup> and to show where in the specification or prosecution history the limitation is defined. Such definitions must be clearly stated in the specification or file history. *Bell Atlantic*, 262 F.3d at 1268, 59 USPQ2d at 1870, (“[I]n redefining the meaning of particular claim terms away from the ordinary meaning, the intrinsic evidence must ‘clearly set forth’ or ‘clearly redefine’ a claim term so as to put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term”).<sup>5</sup> The Examiner cautions that no new matter is allowed.

Failure by Applicant(s) in their next response to address this issue or to be non-responsive to this issue entirely will be considered a desire by Applicant(s) to forgo lexicography in this application and to continue having the claims interpreted with their ordinary and accustomed meaning and with their broadest reasonable interpretation. Additionally, it is the Examiner’s position that above requirements are reasonable.<sup>6</sup> Applicant(s) are also cautioned that

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<sup>3</sup> “Absent an *express intent* to impart a novel meaning, terms in a claim are to be given their ordinary and accustomed meaning. [Emphasis added.]” *Wenger Manufacturing Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1232, 57 USPQ2d 1679, 1684 (Fed. Cir. 2001) (citations and quotations omitted). “In the absence of an *express intent* to impart a novel meaning to claim terms, an inventor’s claim terms take on their ordinary meaning. We indulge a heavy presumption that a claim term carries its ordinary and customary meaning. [Emphasis added.]” *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002) (citations and quotations omitted).

<sup>4</sup> “In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent’s scope must, at the very least, point to a term or terms in the claim with which to draw in those statements.” *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

<sup>5</sup> See also *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996), (“[A] patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, *as long as* the special definition of the term is *clearly stated* in the patent specification or file history. [Emphasis added.]”); *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998) (“Such special meaning, however, must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.”). See also MPEP §2111.02, subsection titled “Applicant May Be Own Lexicographer” and MPEP §2173.05(a) titled “New Terminology.”

<sup>6</sup> The requirements are reasonable on at least two separate and independent grounds: first, the Examiner’s requirements are simply an express request for clarification of how Applicant(s) intend their claims to be interpreted. Second, the requirements are reasonable in view of the USPTO’s goals of compact prosecution, productivity with

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even though claim interpretation begins with this presumption, after issuance the prosecution history may further limit claim scope if Applicant(s) disclaim or disavow a particular interpretation of the claims during prosecution. *Abbott Laboratories v. TorPharm Inc.*, 300 F.3d 1367, 1372, 63 USPQ2d 1929, 1931 (Fed. Cir. 2002). Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles apply to all examined claims currently pending.

***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 12 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lerner (US 2002/0120555 A1).

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1. A method of obtaining information about a time-sensitive item comprising the steps of:	Abstract; [0002], [0030]-[0033], [0042], [0062], [0090]-[0091], [0094]-[0097], [0101] The time sensitive item can either be the commodity, i.e. coffee, sugar, cocoa and cotton, or the offer. Either is time sensitive because they are subject to a time restriction – the commodity is subject to spoilage and the offer is taught to be of limited duration.
Identifying the time-sensitive item; and	Figs. 4A and 4B; [0030]-[0033], [0042], [0062], [0094]-[0097], [0101]
Obtaining the information from a web site.	Figs. 4A and 4B; [0033]. The web site is displayed in the figures.
12. A system for obtaining information about a time-sensitive item comprising:	Abstract; [0002], [0030]-[0033], [0042], [0062], [0090]-[0091], [0094]-[0097], [0101] The time sensitive item can either be the commodity, i.e. coffee, sugar, cocoa and cotton, or the offer. Either is time sensitive because they are subject to a time restriction – the commodity is subject to spoilage and the offer is taught to be of limited duration.
A first computer which has a web site address and which stores the information about the time-sensitive item; and	Figs. 1, 2, 4A and 4B; [0064]-[0071], [0085]-[0086], [0095].
A second computer which identifies the time-sensitive item and which contacts the first computer to obtain the information.	Abstract; Figs. 2, 3, 4A and 4B; [0064]-[0071], [0085]-[0088], [0094]-[0096]. The second computer is a user's/trader's computer with a browser. The time-sensitive item is identified through a search, preset homepage, or through the use of a matching engine.

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Lerner does not explicitly teach that commodities, such as coffee, sugar, cocoa and cotton, or that offers in such a system are “time-sensitive.” However, Lerner does teach that the commodities are physical commodities, such as coffee, sugar, cocoa and cotton (Abstract), that the trader must formulate and implement strategies in futures and options markets to compliment hedging and management of physical positions (taking into account short and long term analysis of fundamental, technical, political and economic factors in order to perform the risk management and operations responsibilities, position limits, margins, profitability, risk/reward of physicals and futures options, counter party risk, country risk all must be monitored) ([0027]), an Arbitrage Watchdog notifies traders of real-time options or spread opportunities based on pre-defined goals (0033), that there are snap tenders typically requested and executed within a matter of hours ([0097]), and that the order validity can be set from 15 minutes or Good until cancelled ([0101]). It would have been obvious to a person of ordinary skill in the art at the time of the invention that either the physical commodities or the offers therefor disclosed by Lerner were time-sensitive items because they are clearly subject to a time constraint or restriction, spoilage/trading or closing of the offer.

7. Claims 1, 2, and 12 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ogasawara (6,327,576 B1).

1. A method of obtaining information about a time-sensitive item comprising the steps of:	Abstract; cols. 1-2, lines 66-5, col. 2, lines 15-35, cols. 2-3, lines 66-10. The time sensitive items are product items purchased by a consumer that have a shelf-life limitation that is made available to the purchaser. They are time sensitive because they are subject to a time restriction – the item has an expiration date.
Identifying the time-sensitive item; and	Abstract; col. 2, lines 15-35, col. 4, lines 40-58, cols. 12-13.
Obtaining the information from a web site.	Col. 4, lines 25-39.
2. A method of obtaining expiration information about a time-sensitive item comprising the steps of:	Abstract; cols. 1-2, lines 66-5, col. 2, lines 15-35, cols. 2-3, lines 66-10, col. 3, lines 47-59.
Identifying the time-sensitive item; and	Abstract; col. 2, lines 15-35, col.4, lines 40-58, cols. 12-13.
Obtaining the expiration information from a web site of a seller of the time-sensitive item.	Col. 4, lines 25-39.
12. A system for obtaining information about a time-sensitive item comprising:	Abstract; Figs. 1 and 2; cols. 1-2, lines 66-5, col. 2, lines 15-35, cols. 2-3, lines 66-10. The time sensitive items are product items purchased by a consumer that have a shelf-life limitation that is made available to the purchaser. They are time sensitive because they are subject to a time restriction – the item has an expiration date.
A first computer which has a web site address and which stores the information about the time-sensitive item; and	Abstract; Figs. 1 and 2; col. 3, lines 23-58, col. 4, lines 25-39.
A second computer which identifies the time-sensitive item and which contacts the first computer to obtain the information.	Abstract; Figs. 1 and 2, col. 4, lines 25-39, cols. 12-13. The second computer is a user's/trader's computer with a browser. The time-sensitive item is identified through the listing, in and out procedures, and scanning.

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Ogasawara does not explicitly teach that product items with a shelf-life, i.e. an expiration date are “time-sensitive.” However, Ogasawara does teach that the items are best used by a certain date, should be used within a certain date, are nearly expired and are expired (Fig. 7). Ogasawara further teaches that there are several different types of shelf life limitation information that are associated with certain individual perishable products, including the expiration date for an unopened product, and the freshness period once opened (col. 3, lines 10-15). It would have been obvious to a person of ordinary skill in the art at the time of the invention that product items with a shelf-life limitation or freshness period disclosed by Ogasawara were time-sensitive items because they are clearly subject to a time constraint or restriction, i.e. expiration.

8. Claims 1, 2, and 12 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mankes (6,477,503 B1).

1. A method of obtaining information about a time-sensitive item comprising the steps of:	Abstract; Figs 1-2, 4, 7-8, col. 1, lines 16-29, col. 4, lines 23-34. The time sensitive items are product items are the hotel and motel rooms being reserved by either a consumer or a reseller that have a time constraint either in the rate or the availability. They are time sensitive because they are subject to a time restriction.
Identifying the time-sensitive item; and	Abstract; Figs. 2 and 8; cols. 4-5, lines 46-1, col. 5, lines 9-19; cols. 7-8, lines 22-23. The consumer or reseller logs onto the ASR through a web page and makes a specific inventory request based upon the displayed available inventory according to the consumer's criteria. The specific example is in reference to hotel rooms.
Obtaining the information from a web site.	Abstract; Figs. 2 and 8; cols. 4-5, lines 46-1, col. 5, lines 9-19; cols. 7-8, lines 22-23. The consumer or reseller logs onto the ASR through a web page and makes a specific inventory request based upon the

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	displayed available inventory according to the consumer's criteria. The specific example is in reference to hotel rooms.
12. A system for obtaining information about a time-sensitive item comprising:	Abstract; Figs 1-2, 4, 7-8, col. 1, lines 16-29, col. 4, lines 23-34. The time sensitive items are product items are the hotel and motel rooms being reserved by either a consumer or a reseller that have a time constraint either in the rate or the availability. They are time sensitive because they are subject to a time restriction.
A first computer which has a web site address and which stores the information about the time-sensitive item; and	Abstract; Figs. 1-2, 7-8; col. 5, lines 9-33, cols. 5-6, lines 58-60, col. 7, lines 22-46. The first computer is the ARS.
A second computer which identifies the time-sensitive item and which contacts the first computer to obtain the information.	Abstract; Figs. 1-2, 7-8; cols. 5-6, lines 58-60, cols. 7-8, lines 47-23. The second computer is the consumer/reseller/travel agent.
13. A system for obtaining information about a time-sensitive item comprising:	Abstract; Figs 1-2, 4, 7-8, col. 1, lines 16-29, col. 4, lines 23-34. The time sensitive items are product items are the hotel and motel rooms being reserved by either a consumer or a reseller that have a time constraint either in the rate or the availability. They are time sensitive because they are subject to a time restriction.
A first computer associated with a supplier of the time-sensitive item which has a web site address and which stores the information about the time-sensitive item; and	Abstract; Figs. 1-2, 7-8; col. 5, lines 9-33, cols. 5-6, lines 58-60, col. 7, lines 22-46. The first computer is the ARS.
A second computer associated with the retailer of the time-sensitive item which identifies the time-sensitive item and which contacts the first computer to obtain the information.	Abstract; Figs. 1-2, 7-8; cols. 5-6, lines 58-60, cols. 7-8, lines 47-23. The second computer is the reseller.

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Mankes does not explicitly teach that hotel rooms are “time-sensitive.” However, Mankes does teach that the system will be described with primary reference to the reservation of accommodations, specifically hotel and motel rooms, that once an item is sold it is removed from the available inventory (col. 2, lines 65-67), and that the local system keeps the ARS up to date with the current inventory from the local event owner (col. 6, lines 35-40). It would have been obvious to a person of ordinary skill in the art at the time of the invention that hotel and motel rooms and the association different rates/discounts for the rooms disclosed by Mankes were time-sensitive items because they are clearly subject to a time constraint or restriction, i.e. spoilage and expiration.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Vanker, et al., US 2002/0099631 (July 25, 2002) teaches identifying time-sensitive items utilizing a web-site and includes suppliers and retailers computers.

Targeted Advertising Arrives (Metrocall Launches New Solicitation Program, Signing Up with HitMeNow.com to Go After “Permission Marketing), Wireless Week, December 20, 1999, pg. 18, teaches an Internet clearinghouse of time-sensitive consumer goods.

Barbara A. Worcester, Competing with the Big Boys, Hotel and Motel Management, Vol. 214, Iss. 17, October, 4, 1999, pg. 45, teaches an internet web site that provides central-reservation agencies and independent hotels with a web site to sell hotel rooms to consumers.

In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, and because “the continual, chief complaint of inventors and their



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lawyers: that patent examiners are abysmal communicators, both orally and in writing,”<sup>7</sup> the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has provided Applicant(s) with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. If Applicant(s) disagree with *any* factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,<sup>8</sup> the Examiner respectfully requests Applicant(s) *in their next response* to expressly traverse the Examiner’s position and provide appropriate arguments in support thereof. Failure by Applicant(s) *in their next response* to traverse the Examiner’s positions and provide appropriate arguments in support thereof will be considered an admission by Applicant(s) of the factual determinations and legal conclusion not expressly traversed.<sup>9</sup> By addressing these issues now, matters where the Examiner and Applicant(s) agree can be eliminated allowing the Examiner and Applicant(s) to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer I. Harle whose telephone number is (703) 306-2906. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone numbers for the

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<sup>7</sup> Sabra Chartrand, *A Bid to Overcome Patent Backlogs*, 152 N.Y. Times C2 (Sept. 23, 2002).

<sup>8</sup> E.g., if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner’s implied position that the references are analogous art.


<sup>9</sup> See also MPEP §714.02, 37 CFR §1.111(b), and 37 CFR §1.104(c)(3).

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organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Jennifer Ione Harle  
July 24, 2003



Kenneth R. Rice  
Primary Examiner